IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28463 of 2007(L)

PETITIONER:

K.M.JAYASENAN, S/O. K.MADHAVAN,
'SUMERU', ASRAMAM WARD, ARYAD SOUTH VILLAGE,
AMBALAPUZHA TALUK,
AVALUKKUNNU P.O., ALAPPUZHA,
REPRESENTED BY SECRETARY AND TREASURER,
GENERAL HOSPITAL, ALAPPUZHA.

BY ADVS. SRI.T.A.SHAJI
& SMT.T.V.NEEMA

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

3. THE PRINCIPAL SECRETARY TO GOVERNMENT,
FINANCE (RULES) DEPARTMENT,
THIRUVANANTHAPURAM.

4. THE DIRECTOR OF HEALTH SERVICES,
KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON **25/09/2007**, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.28463 of 2007 L

Dated this the 25th day of September, 2007.

JUDGMENT

The petitioner is working as a Lay Secretary and Treasurer of the General Hospital, Alappuzha in the Kerala Government Health Services Department. He attained the age of 55 years as on 16.9.2007 and is due to retire on superannuation on 30.9.2007.

2. The VIIIth Pay Revision Commission appointed by the Government submitted a report on 22.2.2006. One of the recommendations made by the said Pay Commission was extension of retirement age of the employees by another three years. Apparently, the recommendations have been considered by the Government and Ext.P1 order has been passed. The petitioner specifically refers to Clause 4 of Ext.P1, which reads as follows:

> "4. The commission submitted its final report to Government on 22.2.2006. After examining the recommendations of the Pay Revision Commission, the Government are pleased to accept these in toto without any modification."

3. Learned counsel for the petitioner Sri.Shaji contends that on the Government accepting the recommendations of the Pay Revision Commission in toto, essentially, the Government has, therefore, proposed to enhance the retirement age of the employees from 55 years to 58 years. Relying on Ext.P1 order, the petitioner sent a representation to the Chief Minister. Apparently, it was forwarded to the Government and it was dismissed by Ext.P2 order, in which it is stated that no decision, as such, has been taken by the Government hitherto regarding the enhancement of the retirement age and therefore, it is not possible to accede to the request of the petitioner. Ext.P3 is another reply given from the Finance Department, which reads as follows:

> "With reference to the above, I am to inform you that State Government have no intention to enhance retirement age of employees. Hence Government regrets its inability to consider your request."

4. The petitioner has filed Ext.P4 representation to the Chief Secretary to the Government, in which referring to

these factors, he requested the chief Secretary to look into the matter and to take necessary action to issue orders enhancing the pension age of the employees as recommended by the Pay Revision Commission.

5. Mr.Nandakumar, Senior Government Pleader brought to my notice the judgment of a learned single Judge of this court in W.P.(C)No.8863/06 dated 24.3.2006 and the judgment of a Division Bench in W.A.No.656/06 dated 30.3.2006, which inter alia, affirms the decision of the learned single Judge. A contention was raised in the said case that in the light of Ext.P1 Government Order, which purportedly accepts the recommendations of the Pay Revision Commission in toto, there is now, in force, a decision of the Government which contemplates to extend the retirement age from 55 years to 58 years. This contention was considered and the Division Bench held as follows:

> "The recommendations of the Pay Revision Commission remains as recommendations and even though the Government has accepted it in toto, unless consequential changes are brought in

> the Service Rules, it may not be possible for the petitioners to contend that automatically the retirement age of an employee is to be deemed as different than that was laid down by the statutory rules. The Government Pleader also points out that any other view may not be possible to be adopted."

6. In my view, the substantial question raised in this writ petition, based on Clause (4) of the Government Order, stands covered by the decision of the Division Bench. Learned counsel for the petitioner Sri.Shaji further contends that a decision taken by the Government to accept the recommendations of the Pay Revision Commission should be translated into an amendment in the statutory rules, especially Rule 60(a) of Part I Kerala Service Rules. After all, it is for Government to amend the said Rule. According to him, this aspect has not been correctly understood by the Government while passing Exts.P2 and P3, wherein the petitioner's request was rejected. Essentially, the government has not taken a policy decision as such.

7. I am unable to accept this contention. In my view, even if Ext.P1 order reflects that the recommendations of the Pay Revision Commission inter alia, as regards the

enhancement of the retirement age of the employees is to be accepted by the Government, it does not ipso facto result in enforcement of the decision to enhance the age from 55 to 58 years. The prescription of the age of retirement in the statutory provision, obviously, must have preceded the decision of the Government to fix the age of retirement at 55. The prescription of the retirement age must have also been preceded by recommendations made by appropriate authorities and consideration of the same and deliberate decision by the Government to prescribe the retirement age of 55 years. The acceptance of the report of the Pay Revision Commission by itself cannot be treated as a final decision taken by the Government to enhance the retirement age from 55 to 58 years. If Ext.P1 is, therefore, not treated as a final decision by the Government deciding to enhance the age from 55 to 58 years, there is no other material to indicate that there is a decision of the Government which will afford an enforceable right to the employees.

8. No doubt, Exts.P2 and P3 proceeded on the premise that the Government has not taken a policy decision

to enhance the age from 55 to 58 years. In my view, the absence of felicity of expression in the order issued by a Deputy Secretary, obviously, cannot be laid at the door step of the Government.

For all these reasons, I find that there is no merit in the writ petition and the same stands dismissed.

Sd/-

(V.GIRI)

JUDGE

sk/

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P.S. To Judge